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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-290 (Sub- No. 311X)

**NORFOLK SOUTHERN RAILWAY COMPANY
PETITION FOR EXEMPTION
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION -
IN THE CITY OF BALTIMORE, MD AND BALTIMORE COUNTY, MARYLAND**

**REBUTTAL TO NORFOLK SOUTHERN'S MAY 19, 2010 REPLY
REBUTTAL TO MTA'S MAY 20, 2010 REPLY**

1. I, Lois Lowe, herewith provide my Rebuttal to Norfolk Southern Railway Company's ("NSR") May 19, 2010, and to the Maryland Transit Administration's ("MTA") May 20, 2010 Reply to my Reply to James Riffin's Petition to Reopen.

2. 49 CFR 1104.13(c) states that a reply to a reply is not permitted. In spite of this prohibition, both NSR and the MTA filed a reply to my Reply to James Riffin's Petition to Reopen. In NSR's Reply, (see pp. 10-13) it argued that the proper procedure is to disregard the Board's rules, then if someone objects, to seek permission to violate the rules after the violation has occurred. Other Class I carriers take this a step farther: Ignore and / or make misrepresentations to the Board, then argue that it was inadvertent, or the complaining party's fault, when someone objects. (Conrail: numerous abandonments

without Board or ICC permission; Canadian National: state that there were 30 at-grade road blockages during a two-month period, when there were more than 1,400. NSR: misquote what other parties state.)

3. Rather than ignore the Board's rules, I have, and will continue to try to comply with the Board's rules.

4. As previously stated, a reply to a reply is not permitted without permission from the Board. Evidently the procedure is to file the reply, argue that the reply would make the record more complete, then ask the Board to accept it.

5. NSR, in its May 19, 2010 Reply, and the MTA, in its May 20, 2010 Reply, argued that I was not deprived of my Due Process Rights. In order to make the Record more accurate and complete, I would ask that the Board accept this rebuttal. In the alternative, I would ask that the STB strike any references in NSR's and the MTA's Reply which reference anything that was said in my Reply to Mr. Riffin's Petition to Reopen.

REBUTTAL TO NSR'S MAY 19, 2010 REPLY

6. In ¶H on p.10 of NSR's Reply, NSR argued that the Cockeysville Rail Line Shippers Coalition ("CRLSC") had "failed to make any appearance in this proceeding," and had failed to assert any claims.

7. **Rebuttal:** The Due Process claim that I have asserted is mine, as an individual. Since the CRLSC is an unincorporated entity, its voice is heard, and its rights are exercised through its individual members. It was my Due Process Rights that were violated when the STB did not permit me to participate

meaningfully prior to rendering its April 5, 2010 decision, wherein it took away my individual right to make an Offer of Financial Assistance ("**OFA**") to purchase NSR's Cockeysville Industrial Track ("**CIT**") Operating Rights. I had an individual right to submit to the STB shipper-letters-of-support entrusted to my care and custody, which right was summarily abridged by the STB's April 5, 2010 decision.

8. NSR and the MTA argued that "Any failure to timely seek participation and to submit supporting materials was occasioned by such parties' own actions, and not by any failure of the Board." MTA Reply at 2.

9. The STB's regulations state that to participate, one merely needs to note their name and address. I did that. The STB, in a rush to grant NSR's Motion to Strike my Notice of Intent to Participate, struck my initial appearance. Of particular note is the fact that Jo Dettmar explicitly stated in a telephone conversation with me, that I need not present any additional identifying information to the STB, and very explicitly stated that he did not want me to send a photocopy of my driver's license to the STB. So, if the STB did not require me to provide any additional identifying information, then what I initially provided to the STB (my name and address), must have been sufficient. To strike my Notice of Intent to Participate as a Party of Record was arbitrary, capricious, unreasonable, and not supported by any regulation or precedent. Mr. Eric Strohmeier explicitly requested that the STB rule on my Notice of Intent to Participate prior to rendering a decision on the merits, so that I could provide my comments. Rather than taking this sensible step, the STB instead hurriedly rendered its decision exempting this proceeding from the OFA procedures, thereby depriving me of my Constitutional Due Process Right to be

heard "at a meaningful time and in a meaningful manner."
Matthews v. Eldridge, 424 U.S. 319, 333 (1976).

10. NSR argued on p.10 of its Reply that I should have submitted the shippers' letters of support in spite of the fact that the STB ruled that I could not participate. In effect, NSR argued that the correct procedure is to ignore the STB's decisions and ignore the STB's regulations. While NSR may think that is appropriate behavior, I do not. I was taught to speak when spoken to. I was taught that when one is told not to speak, they are not to speak until that admonition is changed. I spoke on January 5, 2010. NSR and the MTA objected, and moved to strike my comments. I objected. The STB sided with NSR and the MTA. Later, the STB realized that it had erred in excluding me from this proceeding. It then gave me the right to speak once again, on April 5, 2010. Unfortunately, it also made its final decision without actually giving me an opportunity to be heard 'at a meaningful time and in a meaningful manner.'

11. The most expeditious way to correct this unlawful action by the STB, is to reopen the proceeding, accept the comments that have been made by Ms. Rudo, Mr. Delmont and myself, then make a decision based on the record presently before the STB.

12. In the alternative, the STB can refuse to admit it made a mistake, then refuse to reopen the proceeding. The matter then will be appealed to the U.S. Court of Appeals, where the Court is likely to vacate the STB's April 5, 2010 decision, then remand the matter back to the STB on purely Due Process grounds. Rather than resolve this matter expeditiously, it will continue for several more years, and the STB will expend more of its limited resources trying to defend an indefensible decision. It will present the STB in an unfavorable light, and is likely to

irritate the Court of Appeals. It will also call into question the competence and impartiality of the Board.

13. I certify under the penalties of perjury that the above is true and correct to the best of my knowledge, information and belief.

Executed on May 21, 2010.

Respectfully submitted,

Lois Lowe

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May, 2010, a copy of the foregoing Response, was served by first class mail, postage prepaid, upon John Edwards, Senior General Attorney, Norfolk Southern Corporation, Law Department, Three Commercial Place, Norfolk, VA 23510-9241, Charles Spitulnik, Kaplan Kirsch, Ste 800, 1001 Connecticut Ave NW, Washington, DC 20036, and was hand delivered to Carl Delmont, James Riffin and Zandra Rudo and was served via e-mail upon Eric Strohmeyer.

Lois Lowe

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